



TOSHA INSTRUCTION

TENNESSEE DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT
DIVISION OF OCCUPATIONAL SAFETY & HEALTH

DIRECTIVE NUMBER: CPL-TN 02-00-140 | **EFFECTIVE DATE:** December 1, 2006

SUBJECT: Complaint Policies and Procedures.

ABSTRACT

Purpose: This instruction revises complaint policies and procedures, and includes instructions for handling complaints received electronically from OSHA's public webpage.

Scope: This instruction applies TOSHA-wide.

References: See paragraph III.

Cancellations: TOSHA Instruction CPL-TN (2.115), Complaint Policies and Procedures

Action Office: All Safety and Health Field Compliance Offices.

Executive Summary

This instruction provides comprehensive guidance for handling complaints relating to workplace safety and health conditions. It defines critical terms relevant to the complaint process, including complaint, formal complaint, and referral, and outlines the conditions a complaint or referral must meet in order to warrant an on-site inspection. This instruction discusses protocol for dealing with electronic complaints, which are becoming a more common method of filing complaints with the Agency, and introduces an electronic code to facilitate tracking of these complaints. Procedures for receiving information via telephone, as well as for handling complaints filed in multiple area offices, are addressed. Additionally, detailed procedures for conducting both on-site inspections and phone/fax inquiries are delineated.

Significant Changes

- The distinction between formal and non-formal complaints has been reestablished.
- The terms *complaint* and *referral* have been redefined so as to be mutually exclusive of one another.
- The term *investigation* has been replaced with *inquiry*.
- The policy has been revised to clarify that classifying information received as a “complaint” or a “referral” does not in itself determine whether an inspection will be conducted as a result. Rather, an inspection is triggered based on the gravity and likelihood of the potential workplace hazard.
- Procedures for handling complaints submitted via OSHA’s public website are outlined.
- A provision has been added to establish that receipt of information giving reasonable grounds to believe that a worker under 18 years of age is exposed to a serious violation of a safety or health standard or a serious hazard will result in an inspection if the information relates to construction, manufacturing, or agriculture, or other industries as determined by the Area Supervisor.

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- I** Purpose. This instruction revises policies and procedures for handling complaints relating to workplace safety and health conditions, and includes procedures for handling complaints received electronically from the OSHA public website.
- II** Scope. This instruction applies TOSHA-wide.
- III** References.
- A. OSHA Instruction 03-06 (IRT 01) (03-06 (ADM 01)), The IMIS Enforcement Data Processing Manual: Table of Contents and Chapters 1 through 7.
 - B. OSHA Instruction IRT 01-00-007 (ADM 1-1.31), IMIS Enforcement Data Processing Manual for Use with the NCR Computer System.
 - C. TOSHA Field Operations Manual (FOM).
 - D. OSHA Instruction CPL 02-00-051 (2-0.51J), Enforcement Exemptions and Limitations under the Appropriations Act.
 - E. OSHA Instruction STP 01-00-002 (2.22A), State Plan Policies and Procedures Manual.
 - F. Memorandum dated October 1, 1998 to Regional Administrators and State Plan Designees from Deputy Assistant Secretary Emzell Blanton, Jr. regarding Referrals in Exempt SIC Codes.
- IV** Cancellations.
- A. TOSHA Instruction CPL-TN 2.115, Complaint Policies and Procedures.
 - B. TOSHA Field Operations Manual, Chapter 1, paragraphs C1 through C4, C6 through C8, and C10.
 - C. Memorandum dated July 13, 1999 from Deputy Assistant Secretary R. Davis Layne to the Regional Administrators and State Plan Designees entitled Child Labor: Responding to Complaints Alleging Hazards to Workers Under 18 Years of Age.
- V** Background. In 1996, OSHA revised its policy on complaints. TOSHA adopted a similar policy on June 28, 1999. The reworked policy eliminated the distinction between "formal" and "non-formal" complaints, and instead classified complaints as those that result in on-site inspections and those that result in investigations using telephone, fax, and similar means. However, this reclassification blurred the distinction between a complaint and a referral, leading to confusion as to how to handle various scenarios that may arise. This revision of the 1996 directive reestablishes the formal and non-formal complaint distinction, while further

clarifying the difference between a complaint and a referral. The definitions of each are now mutually exclusive, and the steps that should be taken in response to each are clearly outlined.

Additionally, on July 13, 1999, OSHA issued a memorandum to provide more effective protection for minor workers (under 18 years of age), who are especially vulnerable to workplace hazards. The guidance provided in this memorandum is now incorporated in this instruction; see Paragraph VII.A.9.

Furthermore, advances in technology now allow employees to review the rights, protections and opportunities available to them under the Occupational Safety and Health Act of 1970 (the Act) on the Internet. Complaints about safety and health hazards at the workplace can also be filed by workers via the Internet. This webpage for employees can be viewed at <http://www.osha.gov/as/opa/worker/index.html>, or is available through OSHA's public website at www.osha.gov. This instruction includes information on how to handle these complaints received electronically.

These procedures continue to provide for quick resolution of complaints, speed hazard abatement and enable TOSHA to focus its inspection resources on the workplaces where they are most needed. The policy continues to protect the right of current employees and their representatives to file complaints about workplace safety and health hazards.

VI Definitions.

- A.** *Complaint.* Notice of an alleged safety or health hazard (over which TOSHA has jurisdiction), or a violation of the Act, submitted by a past or present employee, a representative of employees, a concerned citizen or a T.C.A. §50-3-409 officer seeking resolution of a discrimination complaint.
- B.** *Formal Complaint.* Complaint made by a current employee or a representative of employees that meets all of the following requirements:
 - 1. Asserts that an imminent danger, a violation of the Act, or violation of a TOSHA standards exposing employees to physical harm exists in the workplace;
 - 2. Is reduced to writing or submitted on an OSHA-7 form; and
 - 3. Is signed by at least one current employee or employee representative.
- C.** *Non-formal Complaint.* Any complaint alleging safety or health violations that does not meet all of the requirements of a formal complaint identified

above and does not come from one of the sources identified under Referral in VI.H. below.

- D.** *Inspection.* An on-site examination of an employer's worksite conducted by an TOSHA compliance officer, initiated as the result of a complaint or referral, and meeting at least one of the criteria identified in VII.A (below).
- E.** *Inquiry.* A process conducted in response to a complaint or a referral that does not meet one of the identified inspection criteria. It does not involve an on-site inspection of the workplace, but rather TOSHA advises the employer of the alleged hazard(s) or violations by telephone, fax, e-mail, or by letter if necessary. The employer is required to provide a response, and the Agency will notify the complainant of that response via appropriate means.
- F.** *Electronic Complaint.* A complaint submitted via OSHA's public webpage. All complaints submitted via OSHA's public webpage are considered non-formal.
- G.** *Permanently Disabling Injury or Illness.* An injury or illness that has resulted in permanent disability or an illness that is chronic or irreversible. Permanently disabling injuries or illnesses include, but are not limited to: amputation, blindness, a standard threshold shift in hearing, lead or mercury poisoning, paralysis or third-degree burns.
- H.** *Referral.* Information received from one of the sources listed below alleging a hazard or a violation of the Act believed to exist in a workplace.

 - 1. **CSHO referral** – information based on the direct observation of a CSHO. (Code 14A as A. CSHO (Within Office)).
 - 2. **Safety and health agency referral** – from sources including, but not limited to: NIOSH, Federal OSHA, other state OSHA programs, consultation, state or local health departments, local police and fire departments, medical doctors, as well as safety and/or health professionals in Federal agencies. (As appropriate, code 14A as B. Federal OSHA; C. State OSH; F. Consultation; G. State/Local Government; or I. Other.)
 - 3. **11(c) complaint referral** – made by an 11(c) discrimination investigator when an employee alleges that he or she was discriminated against for complaining about safety or health conditions in the workplace or for refusing to do an allegedly imminently dangerous job or task. (Code 14A as D. Discrimination.)

4. **Other government agency referral** – made by other Federal, State, or local government agencies or their employees. (As appropriate, code 14A as E. Other Federal Agency, or G. State/Local Government.)
5. **Media report** – either news items reported in the media or information reported directly to TOSHA by a media source. (Code 14A as H. Media.)
6. **Employer report** – of accidents other than fatalities and catastrophes. (Code 14A as I. Other.)

I. *Representative of Employees.* Any of the following:

1. An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
2. An attorney acting for an employee.
3. Any other person acting in a bona fide representative capacity, including members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.

The representational capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved of, the filing of the complaint on his or her behalf.

VII Criteria Warranting an Inspection.

- A.** Whether the information received is classified as a complaint or a referral, an inspection of a workplace is normally warranted if at least one of the conditions below is met (but see XI.A.2):
1. A valid formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on an OSHA-7 form, be signed by a current employee or representative of employees, and state the reason for the inspection request with reasonable particularity. Additionally, there must be reasonable grounds to believe either that a violation of the Act or TOSHA standard that exposes employees to physical harm exists, or that an imminent danger of death or serious injury exists, as provided in T.C.A. §50-3-304(a)(1).

2. The information alleges that a disabling injury or illness (as defined in VI.G., above) has occurred as a result of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exist.
3. The information alleges that an imminent danger situation exists (see the TOSHA Field Operations Manual, for additional procedures to be followed.)
4. The information concerns an establishment and an alleged hazard covered by a local, regional, or national emphasis program, the Site Specific Targeting Plan, or the Agency's current strategic plan.
5. The employer fails to provide an adequate response to an inquiry, or the individual who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s).
6. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeat citations within the Area Office's jurisdiction during the past three years, or is an establishment or related establishment in the Enhanced Enforcement Program. However, if the employer has previously submitted adequate abatement documentation for these violations demonstrating that they have been corrected and that programs have been implemented to prevent a recurrence of hazards, the Area Director will normally determine that an inspection is not necessary.
7. An 11(c) discrimination investigator or Regional Supervisory Investigator requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace or for refusing to perform an allegedly imminently dangerous job or task.
8. If an inspection is scheduled or has begun at an establishment and a complaint or referral that would normally be handled via inquiry is received, that complaint or referral may, at the Area Supervisor's discretion, be incorporated into the scheduled or ongoing inspection. If such a complaint is formal, the complainant must still receive a written response addressing the complaint items.
9. If the information gives reasonable grounds to believe that a worker under 18 years of age is exposed to a serious violation of a

safety or health standard or a serious hazard, an on-site inspection will be initiated if the information relates to construction, manufacturing, agriculture, or other industries as determined by the Area Director. (Limitations placed on TOSHA's activities in agriculture by Appropriations Act provisions will be observed. See OSHA Instruction CPL 02-00-051 (2-0.51J)).

NOTE: The information does not need to allege that a child labor law has been violated.

10. The information received is a signed, written complaint from a current employee or employee representative that alleges a recordkeeping deficiency that indicates the existence of a serious safety or health violation.
- B.** In order to schedule an inspection of an employer in an exempt industry classification as specified by Appropriations Act provisions (see OSHA Instruction CPL 02-00-051 (2-051J)):
1. The information must come directly from a current employee; OR
 2. It must be determined and documented in the case file that the information came from a representative of the employee (see VII.I). with the employee's knowledge of the representative's intended action.

VIII Electronic Complaints Received via the OSHA Public Website.

- A.** Electronic complaints submitted via the OSHA public website are automatically forwarded via e-mail to the TOSHA contact mailbox. They are then forwarded to the appropriate safety or health manager who then forwards the electronic complaints to the appropriate Area Office in the state.
- B.** The Central Office manages a "Complaints" mailbox and processes electronic complaints according to internal complaint processing procedures. The complaints mailbox is monitored daily and every incoming complaint is reviewed for jurisdiction.
1. If the complaint falls within the jurisdiction of the Area Office, the complaint is entered into IMIS and processed as usual.
 2. If the complaint falls within the jurisdiction of another Area Office, the complaint is forwarded appropriately.

- C. Complete an OSHA-7 form for all complaint information received. In order to facilitate the tracking of electronic complaints, enter the following code in the Optional Information field:

N-11-LOGXXXXXX

- Where N-11 indicates that the complaint was filed electronically; and
 - The digits following LOG are the unique compliant ID/log numbers assigned to the electronic complaint when processed by the Salt Lake Technical Center. The log number may vary and does not have to be exactly six digits. In entering the code, there is no space between the word LOG and the digits that follow.
- D. Information received electronically from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send or fax a signed copy of the information, request that an OSHA-7 form be sent, or sign the information in person at the Area Office.

Normally a complainant is given five working days to formalize an electronic complaint. The Area Office must actively follow up on information received electronically in order to provide the employee with the opportunity to make the complaint formal.

- E. All complaint related material received electronically should be printed and date stamped with the date the material was submitted and received. When these dates are not the same, the Area Supervisor will determine the appropriate date for the incoming material.

IX Information Received by Telephone.

- A. During the course of telephone contact with the caller, TOSHA will attempt to obtain the following information:
1. Whether the caller is a current employee or an employee representative.
 2. The exact nature of the alleged hazard(s) and the basis of the caller's knowledge, as the individual receiving the information must determine, to the extent possible, whether the information received describes an apparent violation of TOSHA standards or the TOSH Act.

3. The employer's name, address, telephone and fax numbers, as well as the name of a contact person at the worksite.
4. The name, address, telephone number, and e-mail address of any union and/or employee representative at the worksite.

B. As appropriate, TOSHA will provide the caller with the following information:

1. Describe the complaint process, and if appropriate, the concepts of "inquiry" and "inspection," as well as the relative advantages of each.
2. If the caller is a current employee or a representative of employees, explain the distinction between a formal complaint and a non-formal complaint, and the rights and protections that accompany filing a formal complaint. These rights and protections include:
 - The right to request an on-site inspection.
 - Notification in writing if an inspection is deemed unnecessary because there are no reasonable grounds to believe that a violation or danger exists.
 - The right to obtain review of a decision not to inspect by submitting a request for review in writing.
3. If appropriate, inform the complainant of rights to confidentiality in accordance with T.C.A. §50-3-304(a)(3), and ask whether the complainant wishes to exercise this right. When confidentiality is requested, the identity of the complainant is protected regardless of the formality of the complaint.
4. Explain T.C.A. §50-3-409 rights to employees and the protection against reprisal or discrimination.

X Procedures for Handling Complaints Filed in Multiple Area Offices or Regions.

- A.** When the Central Office determines that multiple offices within the State have received the same complaint from an employee or an employee representative regarding a hazardous condition or a deficiency in an employer's safety and health program, or, if the Area Office suspects the same complaint has been filed in multiple Areas, the Area Office should contact the appropriate safety or health manager.

- B.** The Compliance Manager will query all six area offices to determine whether similar complaints have been filed in multiple offices.

If multiple areas have received the same complaint, the Central Office will address the complaint with the employer.

XI Procedures for an Inspection.

- A.** Upon receipt of a complaint or referral, the Area Supervisor (or his or her designee) will evaluate all available information and exercise professional judgment as to whether there are reasonable grounds to believe that a violation or hazard exists.
 - 1. If necessary, reasonable attempts will be made to contact the individual who provided the information in order to obtain additional details or to clarify issues raised in the complaint or referral. See Appendix B.
 - 2. The Area Supervisor may determine not to inspect a facility if he or she has a substantial reason to believe that the condition complained of is being abated.
- B.** Where a complaint has been submitted but, in the professional judgment of the Area Supervisor, there are no reasonable grounds to believe that a violation or hazard exists, no inspection or inquiry will be conducted.
 - 1. Where a formal complaint has been submitted, the complainant will be notified in writing of TOSHA's intent not to conduct an inspection, the reasoning behind the determination, and the appeal rights provided under Rule 0800-1-4-.13. The justification for not inspecting will be noted in the case file.
 - 2. Where a non-formal complaint or referral has been submitted, if possible, the individual providing the information will be notified by appropriate means of TOSHA's intent not to conduct an inquiry or inspection. The justification for not inspecting will be noted in the case file.
- C.** If the information contained in the complaint or referral meets at least one of the inspection criteria listed in VII.A. above, and there are reasonable grounds to believe that a violation or hazard exists, the Area Office is authorized to conduct an inspection.
 - 1. If appropriate, the Area Office will inform the individual providing the information that an inspection will be scheduled and that he or she will be advised of the results.

2. After the inspection, the Area Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued.
- D.** If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from formal complaints of serious hazards will normally be initiated within five working days.

XII Procedures for an Inquiry.

- A.** If the complaint or referral does not meet the criteria for initiating an on-site inspection, an inquiry will be conducted. TOSHA will promptly contact the employer to notify it of the complaint or referral and its allegation(s).
- B.** If a non-formal complaint is submitted that does not meet any of the inspection criteria, the complainant may be given five (5) working days to make the complaint formal.
1. The complainant may come into the Area Office and sign the complaint, or mail or fax a signed complaint letter to TOSHA. Additionally, an OSHA-7 form can be mailed or faxed to the complainant, if appropriate.
 2. If the complaint is not made formal after five (5) working days, TOSHA will proceed with the inquiry process.
- C.** The employer will be advised of what information is needed to answer the inquiry and encouraged to respond by fax or e-mail. Employers are requested to do the following:
1. Immediately investigate and determine whether the complaint or referral information is valid and make any necessary corrections or modifications.
 2. Advise the Area Supervisor either in writing or via e-mail within five (5) working days of the results of the investigation into the alleged complaint or referral information. Although the employer is requested to respond within the above time frame, the employer may not be able to complete abatement action during that time, but is encouraged to do so.
 3. Provide the Area Supervisor with supporting documentation of the findings, including any applicable measurements or monitoring

results, and photographs and/or videos that the employer believes would be helpful, as well as a description of any corrective action the employer has taken or is in the process of taking.

4. Post a copy of the letter from TOSHA where it is readily accessible for review by all employees.
 5. Return a copy of the signed Certificate of Posting to the Area Office.
 6. If there is a recognized employee union or safety and health committee in the facility, provide it with a copy of TOSHA's letter and the employer's response.
- D.** As soon as possible after contacting the employer, the notification letter will be faxed to the employer, or mailed where no fax is available. Sample letters to complainants and employers are provided on the NCR. Note that some of these letters are for private sector use and some are for Federal Agency use. If e-mail is an acceptable means of responding, this should be indicated in the notification letter and the proper e-mail address should be provided.
- E.** If no employer response or an inadequate employer response is received after the allotted five working days, additional contact with the employer may be made before an inspection is scheduled. Ultimately, if the employer provides no response or an inadequate response, or if TOSHA determines from other information that the condition has not been or is not being corrected, an inspection will be scheduled.
- F.** The complainant will be advised of the employer's response, as well as his or her right to dispute that response, and of the right to request an inspection if the alleged hazard persists.
1. When TOSHA receives an adequate response from the employer and the complainant does not dispute or object to the response, an on-site inspection normally will not be conducted.
 2. If the complainant is a current employee or a representative of employees and wishes to dispute the employer's response, the disagreement must be submitted in writing and signed, thereby making the complaint formal.
 - If the employee disagreement takes the form of a written and signed formal complaint, refer to procedures at XI, above.

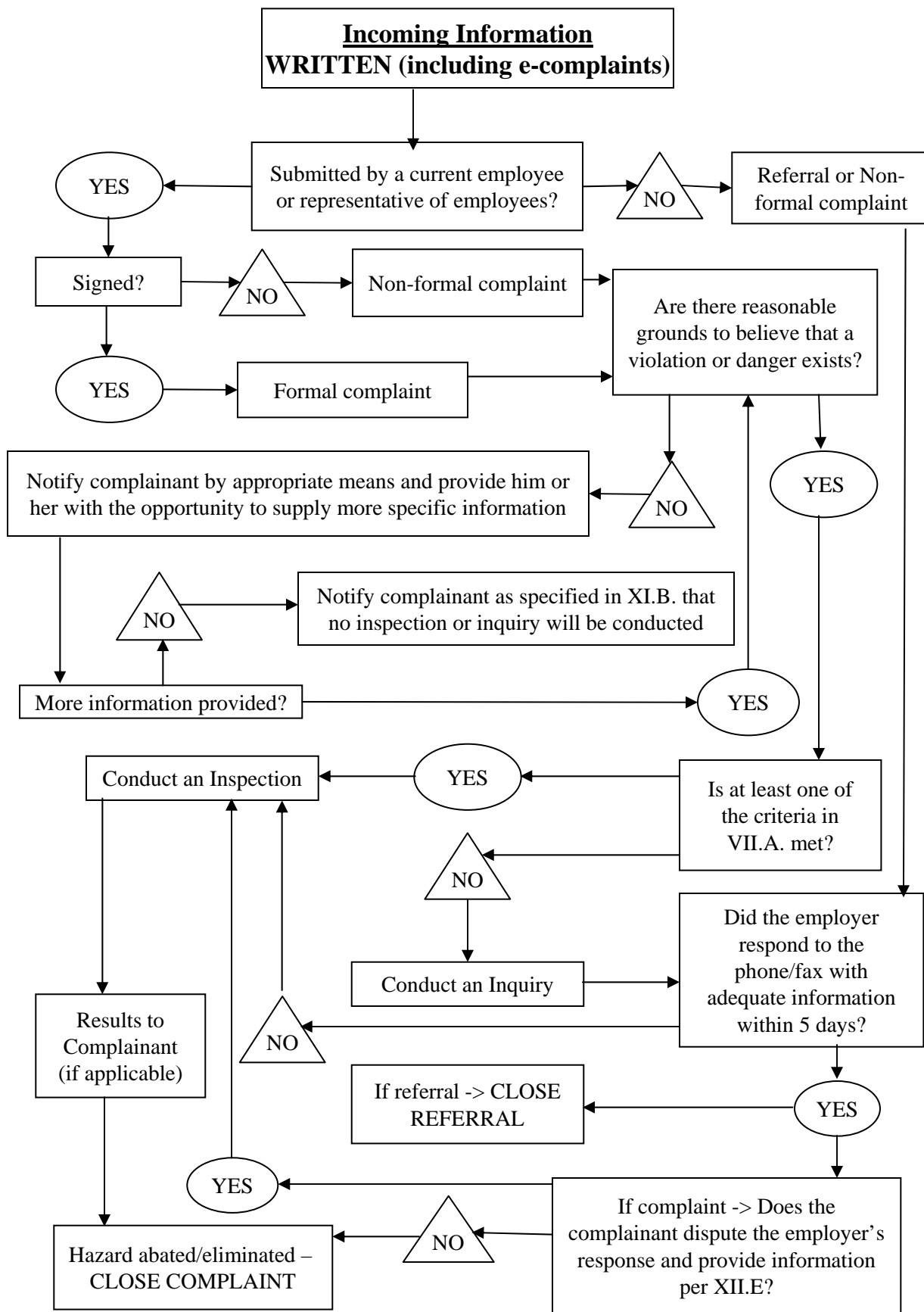
- If the employee disagreement does not take the form of a written and signed formal complaint, some discretion is allowed in situations where, in the professional judgment of the Area Supervisor, the information does not warrant an on-site inspection. In such situations, the complainant will be notified of TOSHA's intent not to conduct an inspection and the reasoning behind the determination. This decision should be sufficiently documented in the case file.
- G. If a signed complaint is received after the complaint inquiry process has begun, the Area Supervisor will determine whether the alleged hazard is still likely to exist based on the employer's response and by contacting the complainant. The complainant will be informed that the inquiry has begun and that the complainant still retains the right to request an on-site inspection if he or she disputes the results and believes the hazard still exists.
- H. The complaint must not be closed until TOSHA confirms that the hazard has been abated and eliminated.

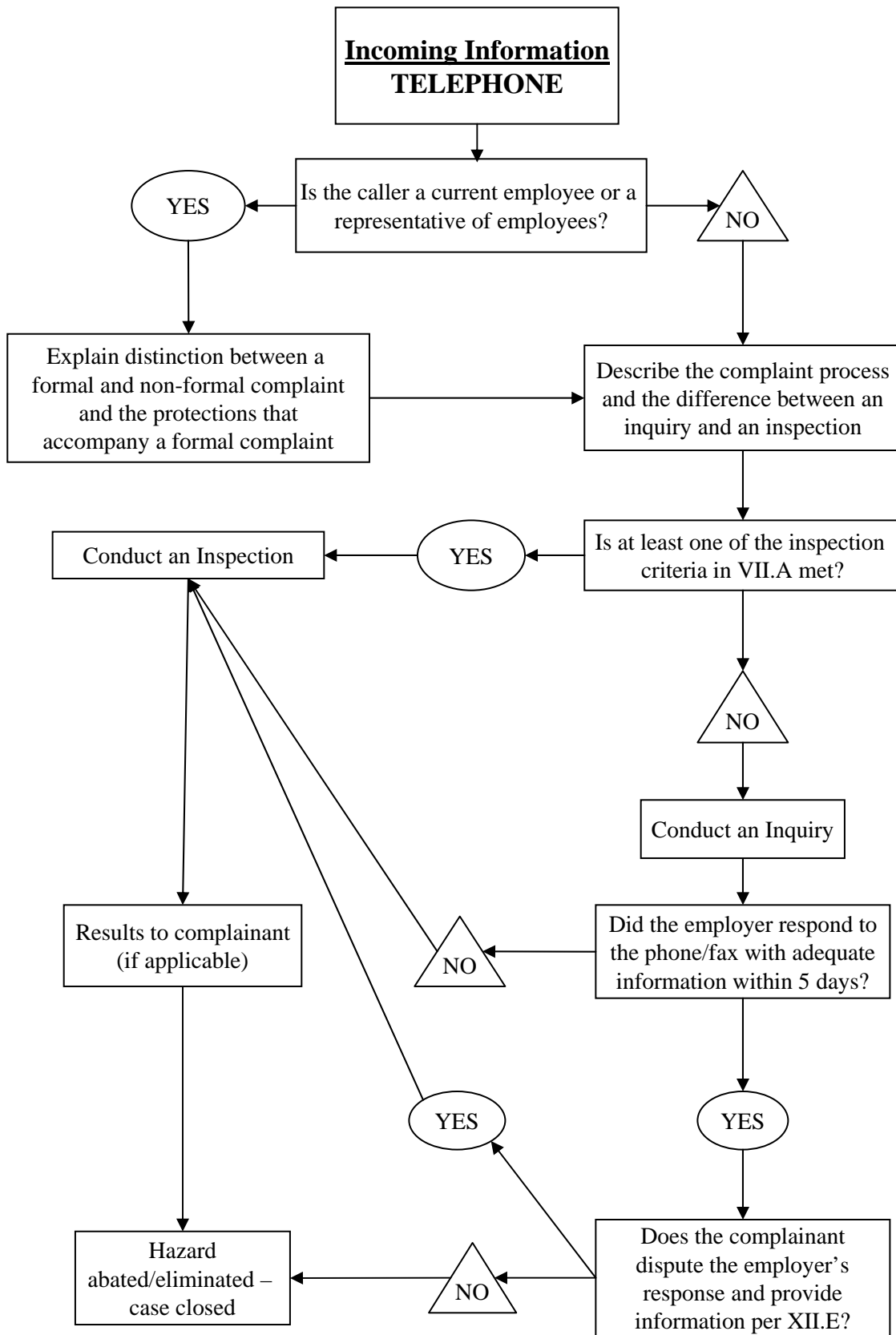
XIII Complainant Protection.

- A. *Identity of the complainant.* Upon request of the complainant, his or her identity will be withheld from the employer in accordance with T.C.A. §50-3-304(a)(3). No information will be given to the employer that would allow the employer to identify the complainant.
- B. *Discrimination Protection.*
 - 1. T.C.A. §50-3-409 provides protection for employees who believe that they have been the subject of an adverse employment action in retaliation for engaging in activities related to workplace safety and health. Any employee who believes that he or she has been discharged or otherwise discriminated against by any person as a result of engaging in such activities may file a discrimination complaint. Such a complaint must be filed within 30 days of the discharge or other discrimination.
 - 2. Complainants should always be advised of their rights and protections against discrimination upon initial contact with TOSHA and whenever appropriate in subsequent communications.

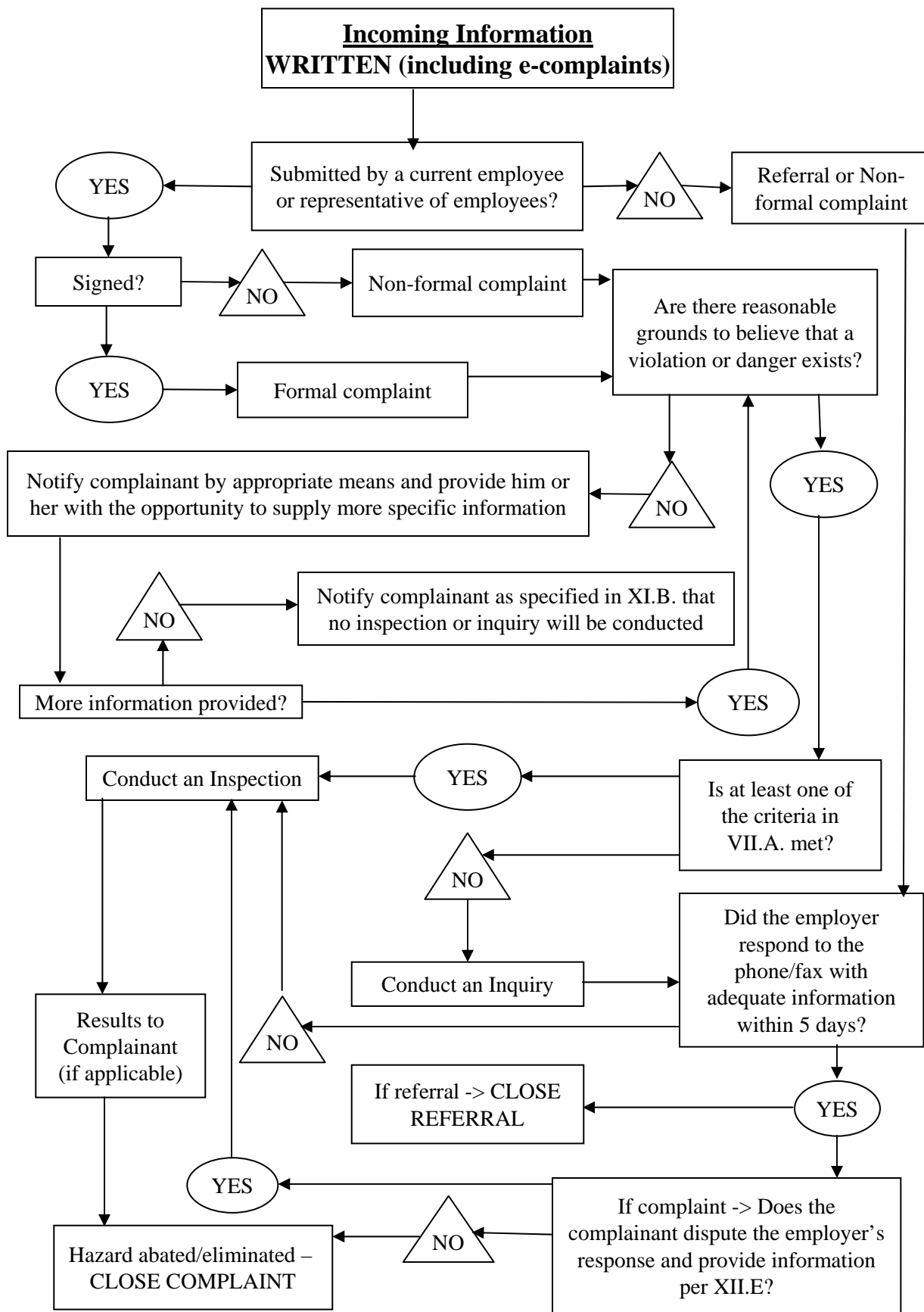
XIV Recording in IMIS. Information about complaint inspections or inquiries must be recorded in IMIS following current instructions given in the IMIS manual. Refer to OSHA Instruction 03-06 (IRT 01) (03-06 (ADM 01)), The IMIS Enforcement Data Processing Manual: Table of Contents and Chapters 1 through 7.

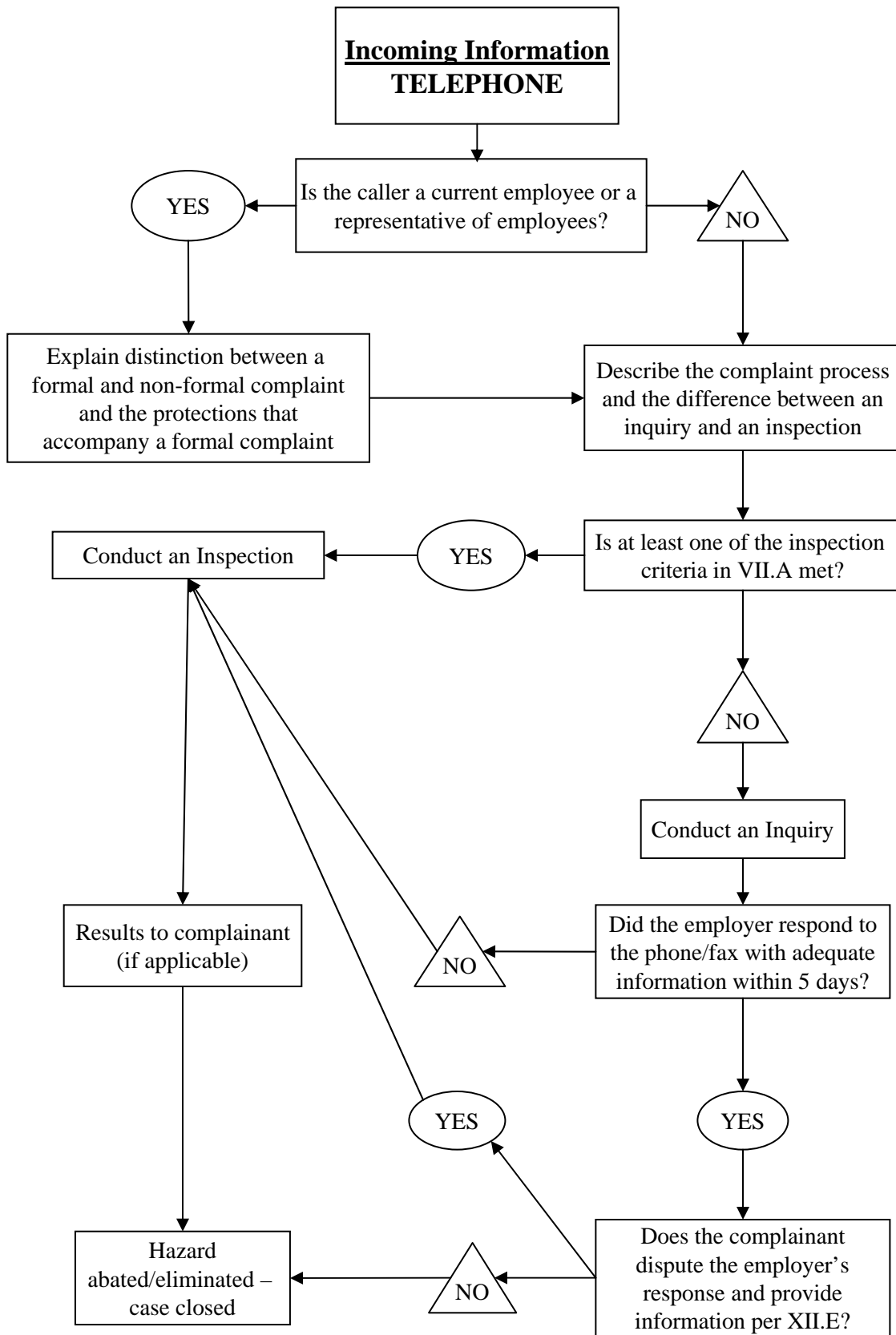
Appendix A





Appendix A





APPENDIX B
Complaint Questionnaire

Obtain information from the caller by asking the following questions, where relevant.

For All Complaints:

1. What is the hazard?

2. How are workers exposed to this hazard? Describe the unsafe or unhealthful working conditions; identify the location.

3. What work is done in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials (e.g., chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?

4. With what frequency are workers doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed (so far as can be determined)? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and, if so, who took these actions? What were the results?

5. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?

6. What personal protective equipment (e.g., hearing protection, gloves or respirators) is required by the employer relevant to the alleged exposure? Is it used

by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.

7. How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?

8. Is there an employee representative or a union in the establishment? Include the name, address, and telephone number of the union and/or the employee representative(s)

For Health Hazards

9. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What were the results?

10. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area which may reduce exposure to the hazard?

11. What administrative or work practice controls has the employer put in place?

12. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a physician for a work-related disease or condition? What was it?

13. Have there been any “near-miss” incidents?

14. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?

15. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?

16. Do employees receive audiograms on a regular basis?

For Safety Hazards:

17. Under what adverse or hazardous conditions are employees required to work? This should include conditions contributing to stress and “other” probability factors.

18. Have any employees been injured as a result of this hazardous condition? Have there been any “near miss” incidents?
